



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

April 7, 2003

MEMBERS OF THE BOARD

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **David Lee Kinney, a minor, by and through his Guardian
Ad Litem Helen Jones, Helen Jones, David Kinney v.
County of Los Angeles
Los Angeles Superior Court Case No. BC 239 529**

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$1,500,000.00, plus assumption of the Medi-Cal Lien not to exceed \$436,497.06.
2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Litigation Report, including the Corrective Action Report, is being transmitted to you under separate cover by the Department of Health Services.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

MEMORANDUM

March 17, 2003

TO: LOS ANGELES COUNTY CLAIMS BOARD

FROM: DAVID J. WEISS, Esq.
Law Offices of David J. Weiss

OWEN L. GALLAGHER
Principal Deputy County Counsel

RE: David Lee Kinney, a minor by and through his Guardian Ad Litem
Helen Jones, Helen Jones, David Kinney v. County of Los Angeles
Los Angeles Superior Court Case No. BC239529

DATE OF
INCIDENT: October 20, 1999

AUTHORITY \$1,500,000, Plus Assumption of the Medi-Cal Lien Not to Exceed
REQUESTED: \$436,497.06

COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle for \$1,500,000 the medical negligence lawsuit brought by David Kinney, a minor, for the injuries he sustained as the result of treatment he received at LAC+USC Medical Center on October 20, 1999. The State, having paid \$436,497.06 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by the County.

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On September 6, 1999, at 11:54 a.m., David Kinney, a 2-year-old boy, was brought by ambulance to the Trauma Center at King/Drew Medical Center with second and third degree burns over two-thirds of his body resulting from an accident at home. In order to protect his airway, a breathing tube (endotracheal [ET] tube) was inserted through his mouth, past the voice box to the breathing passages of the lungs (endotracheal intubation), and he was placed on a mechanical device to aid respiration (ventilator). At 3:50 p.m., David Kinney was transferred to the Burn Unit at LAC+USC Medical Center for further treatment.

On October 17, 1999, it was noted that the percentage of oxygen carried by David Kinney's red blood cells (oxygen saturation) was beginning to decline. Medical personnel believed that the decline in David Kinney's oxygen saturation was due to a fault in the balloon at the end of the ET tube (cuff), which, when inflated, is intended to maintain adequate pressure in the airway and prevent oxygen from escaping. Medical personnel continually monitored David Kinney's condition to ensure that his ventilation status remained within normal limits.

On October 20, 1999, a decision was made to replace David Kinney's faulty ET tube. Between 12:00 noon and 12:10 p.m., David Kinney's ET tube was removed (extubation), and he was reintubated utilizing another ET tube. However, the medical record indicates that during the reintubation procedure, the ET tube was improperly placed into the opening leading to the stomach (esophagus), which went unappreciated by medical personnel.

At 12:20 p.m., David Kinney experienced a severe slowing of his heartbeat (bradycardia), and he was given medication to increase his heart rate. At 12:26 p.m., he suffered a complete cessation of breathing and heart function (cardiopulmonary arrest). Restoration of heart and lung function using artificial respiration and manual closed chest compression (cardiopulmonary resuscitation [CPR]) was initiated, and he was resuscitated. However, from 12:26 p.m., through 12:35 p.m., David Kinney's oxygen saturation was abnormally low and continued to decline. At 12:38 p.m., David Kinney was extubated and successfully reintubated, and his oxygen saturation returned to within normal limits. An analysis of blood drawn at 12:20 p.m., indicated an excessive accumulation of carbon dioxide in David Kinney's blood (respiratory acidosis) and a

severe reduction in oxygen concentration, which is evidence that David Kinney suffered an extreme loss of oxygen (hypoxia), resulting in severe brain damage (hypoxic encephalopathy).

On January 20, 2000, a feeding tube was inserted through David Kinney's abdominal wall into an opening into the stomach (gastrostomy tube), and on February 24, 2000, he underwent surgery whereby an opening is made through the neck into the trachea through which a tube is inserted (tracheostomy) to assist breathing (respiration) on a permanent basis.

On March 7, 2000, David Kinney was transferred to Rancho Los Amigos National Rehabilitation Center, and on June 16, 2000, he was discharged. He currently receives daily 16-hour in-home nursing care. David Kinney suffers from severe neurologic deficits, an inability to speak, and impaired eyesight, which medical experts attribute to hypoxic encephalopathy occurring on October 20, 1999.

DAMAGES

If this matter proceeds to trial, the claimant will likely seek the following:

David Kinney,	
Future Medical Care	\$13,660,027
Loss of Future Earnings	\$ 1,000,000
Pain and Suffering (MICRA limit)	\$ 250,000
Costs of Litigation	<u>\$ 300,000</u>
TOTAL	\$15,210,027

The proposed settlement includes:

David Kinney,	
Cash Settlement	\$ 830,000
David Kinney, Sr.,	
Future Wrongful Death	\$ 25,000
Helen Jones,	
Future Wrongful Death	\$ 25,000
Attorneys Fees (MICRA Estimate)	\$ 320,000
Costs of Litigation	<u>\$ 300,000</u>
TOTAL	\$1,500,000

A portion of the recommended settlement may be directed by claimants to be used to purchase an annuity. The amount and structure of the annuity has not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

This matter involved complex issues surrounding the medical condition of David Kinney and the cause of his injuries. In addition to the normal discovery in such matters, it was necessary to take thirty-eight depositions, several out-of-state depositions, and the retention of nine defense experts. In addition, due to the inability of the parties to reach a reasonable settlement until only after trial in this matter had begun, it was necessary for the County to be completely prepared for trial, including all motions, opposition to motions, exhibits, jury instructions, and witness preparation.

Expenses incurred by the County of Los Angeles in the defense of this case through March 7, 2003, are attorneys fees of \$172,214 and \$113,682.42 in costs.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$1,500,000.00
County Attorneys Fees and Costs	\$ 285,896.42
Medi-Cal Lien	<u>\$ 436,497.06</u>
TOTAL	\$2,222,393.48

EVALUATION

Medical experts will be critical of the failure of medical personnel on October 20, 1999, from 12:10 p.m., through 12:35 p.m., to appreciate that during the reintubation procedure, David Kinney's ET tube was improperly placed into his esophagus. This failure fell below the standard of care, and is directly responsible for the results observed here.

We join with our private counsel, Law Offices of David J. Weiss, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$1,500,000, and payment of the Medi-Cal lien in the amount of \$436,497.06.

The Department of Health Services concurs in this settlement.